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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/2470/2005-EX[DB]

Dated: **27/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E.MEERUT-II
Opp.Shaheed Smarak Delhi Road Meerut-
II

C.C.E.MEERUT-II (Appellant)

VS

GURU STEEL ROLLING MILLS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/963/2012-EX[DB]** dated **14/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
GURU STEEL ROLLING MILLS
16 KM. Hapur Road Vill-Lakhan Distt
Ghaziabad U.P.

2. Advocate(s) / Consultant(s):

NrNF

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Appeal No.2470 of 2005

(Arising out of OIO No.11/Commr/MRT-II/2004 dated 31.05.2004 passed by the CCE, Meerut-II)

Date of Hearing/Decision: 14.08.2012

Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Meerut — Appellants

Vs.

M/s.Guru Rolling Mills — Respondent

Present: Shri R.K.Verma, DR for the Appellant
Present None for the respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL Order No. A/963/2012-Ex(BR)

Per: Rakesh kumar

The respondent manufacture hot rolled product, namely, MS bar, plates, angles etc. During the period of dispute, they were operating under the compounded levy scheme under Rule 96ZP of the erstwhile Central Excise Rules ,1944. Their annual capacity of production for the period 01.09.1997 to 31.03.1998 was determined by the Commissioner at 879.47 MT. On 05.11.1997, the respondent intimated to the department about closure of their unit from that date. However, in the intimation letter, they did not mention stock of finished products and electricity meter reading. The jurisdictional staff of central excise office, however, in response to communication visited their unit on 17.11.1997, 22.11.1997 and 26.03.1998 and found the same closed on each occasion. The jurisdictional Commissioner vide order Memorandum Order No.11/Commr/MRT-II/2004 dated 21.5.2005 allowed the abatement of 135 days with effect from 17.11.1997. This order of the Commissioner was reviewed by the Board under section 35E(1) directing the Commissioner to file appeal against the same on the ground that since in the letter dated 05.11.1997, the appellant had not declared the closing stock of finished goods as on the night of 04.11.1997 and the electricity meter reading at that time as per the requirement fo relevant rule, the Commissioner's order permitting abatement for the period from 17.11.1997 is incorrect. In response of this direction dated 06.05.2005 of the Board, this appeal has been filed by the department.

2. Though the notice for hearing had been issued none represented the respondent. Hence, in terms of the provisions of Rule 20 of CESTAT (procedures) Rules, 1982, so far as the respondent are concerned, the matter is being decided ex-parte.

3. Heard the learned DR Shri R.k.Verma. He submitted that as per Rule 96ZP (2) of the erstwhile Central Excise Rules ,1944, the respondent was entitled to abatement in respect of continuous closure period of not less than 7 days subject to the condition that the respondent informs the department in writing on or prior to the date of closure and also intimates to the department the meter reading of

electricity and also closing balance of stock of his product. It is contended that in the instant case though the respondent-assessee intimated to the department his intention to close the unit with the effect from 05.11.1997,but the assessee did not inform the department either about the meter reading of electricity or closing balance of stock as on 05.11.1997. Thus, this is clear case of non compliance of rule, and as such the Commissioner (adjudication) was not justified in allowing the abatement.

4. In order to appreciate the aforesaid plea of the learned DR, it would be useful to have a look on relevant portion of the impugned order to see as to how the Commissioner adjudication has dealt with the issue. Relevant portion of the order is reproduced thus:

M/s.GSRM, vide letter dated 05.11.97, intimated the Department that they will be closing their unit from 05.11.97.

In view of the above provisions M/s.GSRM was required to file an intimation regarding electric meter reading and closing stock of the products. I find that there was no electric connection for main rolling plant and it was run on Diesel Generator Set. M/s.GSRM was, however, required to intimate the closing stock of the product, within they failed to submit.

Even the Department failed to verify the closing balance after having received the intimation about closure on 05.11.97. The officers of the Department, however, visited premises of M/s.GSRM on 17.11.97 & 22.11.97 and on both the occasions the unit was found closed. Again on 26.03.98 at the time of visit Dr.R.C.S.Mehta the unit was found closed. Thus the fact of closure of the unit is well established. However, the unit at the time of intimating closure did not intimate the closing stock. This information would have helped the Department in finding out excess clandestine production, if any, in case the unit had *restarted. Since the unit never started again, this contravention is not of much significance. Surprisingly the departmental officers also never insisted upon securing the closing stock when they received the application of closure or even later during their visits to the unit."*

5. On reading of the above, we find that Commissioner has observed that the rolling mill and was being run on diesel generator set. Therefore non furnishing of latest meter reading of electricity before the closure of the unit is not of much consequence. As regards non furnishing of information regarding closing stock position, of course there can be no denial that the respondent did not inform about the stock position. However, the fact remains that the officials of the department were negligent in the duty inasmuch as they did not visit the factory of the respondent for verification, despite having received intimation about the closure of production of unit on 05.11.1997. From the records, it appears that the officials of the department visited the factory of the respondent on 17.11.1997, 22.11.1997 and 26.03.1998 and during those visits they found unit closed. The department has not filed report regarding those three visits for the benefit of the Tribunal. Thus, this is not clear whether or not the officials of the department verified the stock position on 17.11.1997, 22.11.1997 and 26.03.1998. In the absence of such evidence on record, one cannot conclude whether or not excisable stock was actually available at the factory of the respondent on 17.11.1997 onwards. Though the rule cast an obligation on the assessee to furnish information regarding stock position but this does not mean the excise official have no duty to verify the stock position. When the excise officers, however, visited the factory of the respondent on three occasions, it was expected of them to verify the

stock position and presumably they must have verified the stock position, the aforesaid information has been withheld by the department. Therefore adverse presumption has to be drawn against them. Under these circumstances, we do not find any infirmity in the Commissioner's order allowing abatement for 135 days with effect from 17.11.1997, which may call for interference in appeal by the Tribunal. In view of the above, we do not find merit in this appeal and accordingly dismiss the same.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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